A BILL Authorizing the allotment in severalty of Indian lands in New York State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General be, and he hereby is, authorized and directed to institute such suit or suits as may be necessary in the Federal courts of the United States to test the validity and extent of the claim of the so-called Ogden Land Company in and to the lands embraced within any of the Indian reservations in the State of New York.

SEC. 2. That the Seneca Nation, being a corporate body under the laws of the State of New York, by appropriate resolution, agreed to by a majority of the members of the corporate body, on which resolution all the adult members, both male and female, of the Seneca Nation shall have the right to vote, may consent to a division of their lands in severalty and may authorize the president of the Seneca Nation to execute tribal or corporate deeds for particular tracts of land to individual members of the tribe, as hereinafter provided, said deeds to be signed by the president of said Seneca Nation, attested to under the seal of the corporate body by the secretary of said nation, and approved by the Secretary of the Interior.

SEC. 3. That the Secretary of the Interior be, and he hereby is, authorized to appoint a commission consisting of three members, one of whom shall represent the Interior Department, one the Seneca Nation of Indians, and the third to represent the State of New York, to be designated by the governor of said State, subject to approval by the Secretary of the Interior. The commission so appointed shall constitute a board for the purpose of appraising, dividing, and allotting in severalty the surface of the lands of the Seneca Indians in New York, which division or allotment shall be based on an average value of the allottable lands, to be ascertained by dividing the total number of members of the tribe entitled to allotment into the total value of the surface of the tribal lands of the Seneca Nation subject to allotment, as hereinafter provided. The improvements on any of said allottable lands placed thereon by individual members of said nation entitled to allotment, or otherwise owned by them, shall not be included in any appraisement authorized hereby, nor shall the oil, gas, limestone, or similar deposits of a metalliferous or nonmetalliferous nature be included in said appraisement, such deposits being hereby reserved for the benefit of the tribe at large and subject to lease for their benefit, as now provided by law. Any and all lands heretofore occupied by or used in connection with any school, church, missionary, religious, cemetery, administrative, or other tribal or governmental purposes shall not be appraised, but all of such lands are hereby specifically reserved from allotment hereunder. Such additional land as in the judgment of the commission may reasonably be needed for future use for school, church, missionary, religious, cemetery, administrative, or other tribal or governmental purposes shall not be included in the appraisement provided for herein, and the Secretary of the Interior is hereby authorized to withhold such land from allotment or other disposition. The lands included in the villages of Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca, and Red House, the establishment of which was had under the act of February nineteenth, eighteen hundred and seventy-five (Eighteenth Statutes at Large, page three hundred and thirty), or any other legally constituted village or town, shall not be included in said appraisement. The members of said commission shall be paid a salary of $10 per day each while actually and necessarily employed, and in addition thereto shall be allowed their actual necessary traveling expenses, including sleeping-car fare, but exclusive of subsistence. Said commission, by and with the approval of the Secretary of the Interior, and at such compensation as may be fixed by him, may employ such clerks, surveyors, timber cruisers, or other assistants as may be necessary to carry out the provisions of this act.

SEC. 4. That the commission authorized to be created hereby shall prepare, or cause to be prepared, a roll, subject to approval by the Secretary of the Interior, showing the membership of the Seneca Indians in the State of New York entitled to share in the distribution of the tribal or corporate assets, and on completion of the appraisement and ascertainment of the standard value of an allotment or each member's share thereof, such commission shall proceed to allot in severalty to the individual members of such nation such tract or tracts of land within the Allegany and Cattaraugus Reservations in said State as may be cultivated, improved, occupied, or selected by such individual members, in such areas, however, as not to exceed the standard value of an allotment. Selections for minor children shall be made by their parents, and selections for orphans shall be made by the commission to be appointed hereunder. No person who is not in being at the time of allotment by the commission shall be given an assignment of land.

SEC. 5. That individual members of the Seneca Tribe desiring to acquire more land than represented by the standard value of an allotment as fixed by said commission

may, with the consent of the Secretary of the Interior and under such rules and regulations as he may prescribe, purchase "allotment rights" from other members of the band desiring to sell. All moneys received from the sale of such rights shall be deposited in some suitable bank or banks to the credit of the party selling such rights and shall be subject to all the rules and regulations governing the handling of individual Indian money. The commission created hereby shall keep a complete record of all such sales and shall procure from the individuals selling such "allotment rights" an acknowledgment in proper form that the sale thereby made is a full and complete extinguishment of the right of the person therein named to share in the lands of the Seneca Nation, except such as may be otherwise reserved under the provisions of this act.

SEC. 6. That the Secretary of the Interior shall cause to be prepared and furnished for use of the commission a form of tribal or corporate deed which, in addition to reciting the claim or preemption right of the so-called Ogden Land Company (should such claim be recognized by the courts), shall further recite the retention in the tribe at large of the oil, gas, limestone, and other deposits of a similar nature as provided in section three hereof. Such deeds shall also recite that the lands thereby allotted shall not be subject to lease, sale, mortgage, alienation, taxation, or any other encumbrance for a period of twenty-five years from the date thereof without the consent of the Secretary of the Interior, as hereinafter provided. After approval of the tribal or corporate deeds as herein provided the individual allottees of the Seneca Band may lease their allotments made hereunder for a term of not exceeding ten years for agricultural or grazing purposes, under such rules and regulations as the Secretary of the Interior may prescribe.

SEC. 7. That during the twenty-five-year trust period the land of any individual allottee, with the consent of such allottee, or his heirs in case of death, may again be appraised and offered for sale under such rules and regulations as the Secretary of the Interior may prescribe. If it should be found by the courts that the Ogden Land Company, so called, has a preference right to purchase the lands of the Indians of the Seneca Nation, such individual allotments as may be offered for sale hereunder shall be so offered as to give the said Ogden Land Company, its successors or assigns, a period of ninety days within which to exercise its preference right to first purchase. Should such right not be exercised by said company, its successors or assigns, during such ninety-day period the right of such company, its successors or assigns, to first purchase shall thereby and thereupon become forfeited, and the lands so offered for sale may be sold to the highest and best bidder.

SEC. 8. That upon approval by the Secretary of the Interior of the tribal or corporate deeds in severalty as herein provided the patentees named therein shall thereby become citizens of the United States and amenable to the laws of the United States and of the State or Territory where such allottees may then reside.

SEC. 9. That all of the lands in any and all of the Indian reservations in the State of New York are hereby declared to be "Indian country" within the meaning of the act of June thirtieth, eighteen hundred and thirty-four (Fourth Statutes at Large, page seven hundred and twenty-nine), and all the laws of the United States prohibiting the introduction of intoxicants into the Indian country are hereby extended over and shall apply to all Indian lands in the State of New York until otherwise provided by Congress.

SEC. 10. That the provisions of this act, as far as applicable, shall extend to any and all of the other Indians and reservations in the State of New York.

SEC. 11. That there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of $75,000 to enable the Attorney General and the Secretary of the Interior to carry out the provisions of this act.

DEPARTMENT OF JUSTICE,
Washington, D. C., September 28, 1914.

Hon. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs,
House of Representatives.

DEAR SIR: I beg to acknowledge the receipt of your letter of the 16th instant, inclosing a copy of H. R. 18735, entitled "A bill authorizing the allotment in severalty of Indian lands in New York State, and for other purposes." I lack the information necessary

to enable me to make any practical suggestions concerning the New York Indians and their affairs and the practical need of such a measure as this for the amelioration of their condition. Suggestions in these regards will come to you, I presume, from the Secretary of the Interior. Neither am I apprised of the nature of the claim of the Ogden Land Co., which is mentioned in the first section and elsewhere in the bill.

Advising you first that my understanding of the bill and its purposes is derived wholly from the bill itself, I would say that I see no objection to it other than the following:

1. While the bill does not say so expressly, I assume that the Secretary of the Interior, in carrying it out, would be expected to defer the appointment of the commission mentioned in section 3 until after the claim of the Ogden Land Co., whatever it may, had been finally adjudicated. Section 6 provides that the deeds hereafter to be delivered to the allotees by the commission shall recite the existence of that claim if "recognized by the courts." It can not well be the intention to appoint the commission possibly years before the final adjudication can be accomplished, and therefore I take it for granted that the appointment should not take place until after the claim of the Ogden Land Co. had been passed upon by the highest appellate court to which it could go (doubtless the Supreme Court of the United States) in the case contemplated by section 1, unless possibly, the Attorney General, upon being defeated by the company in a lower court, should conclude to abandon the litigation there. It may be that your committee could make the bill more definite here.

2. It has been suggested to me that the provision in section 4 that "no person who is not in being at the time of allotment by the commission shall be given an assignment of land" may cause trouble. The process of allotment may continue through a considerable period of time and new members of the tribe may be born during the period. It would be well, I think, to provide affirmatively that when the roll mentioned in section 4 shall have been prepared by the commission and approved by the Secretary of the Interior, it shall be deemed final and conclusive upon the right to allotment in so far as any children born thereafter may be concerned.

3. Section 5 allows individual members to buy the allotment rights of other members "with the consent of the Secretary of the Interior and under such rules and regulations as he may prescribe." This provision, as far as I know, is not found in any allotment act heretofore passed. A mere novelty, however, is no objection. The principal things to be guarded against in all legislation of this sort are improvidence and overreaching. As, in this instance, the transactions contemplated are only permissible with the consent of the Secretary of the Interior and under his rules and regulations, I have no criticism to make upon this part of the bill save that it may involve undue complexities of administration.

4. Section 6 allows conveyance of allotted lands by the allottees after 25 years from the dates of the tribal deeds. Restraints of this sort are attached to allotments upon the theory that the allottees are incapable of managing their own affairs. While it has been customary to name a definite date after which the allottees may convey, I submit that experience has demonstrated the folly of assuming in this manner that the average Indian, incompetent

to-day, will become competent within any period arbitrarily fixed. On the contrary, it is safe to assume that the average adult who is not competent now will never become competent as long as he lives to safeguard his own interests. Consequently these legislative presumptions of competency not only fly in the face of well-known facts, but, it seems to me (and I make the suggestion with much deference), are indulged in with too much regard for the idea of getting rid of the Indian and developing his property and too little regard for protecting and developing the Indian himself. I would advise, therefore, that instead of fixing a definite period, as is done in section 6, the section be amended to declare that none of the lands allotted shall be subject to taxation or to any form of alienation, encumbrance, or lease, while in the ownership of the allottees or their heirs, except in respect of such persons as the Secretary of the Interior, upon special inquiry, shall have adjudged to be competent to manage their own affairs.

In line with this suggestion it seems to me that the 10-year period of lease authorized in the last sentence of section 6 is probably too long.

5. The use of the expression "trust period" in section 7 may be objectionable from a technical standpoint. If the tribe owns the fee there is, properly speaking, no trust affecting the allottees' title under the tribal deeds other than the general power of guardianship residing in the Government. I assume that the tribe does own the fee; but if the fee be in the United States, then I would suggest the propriety of some provision whereby that title may be conveyed when the time comes for the removal of all restrictions.

6. Section 8 provides that upon approval of the tribal deeds the patentees named therein shall become citizens of the United States and amendable to the laws of the United States and of the State or Territory where they may then reside. Provisions like this, particularly the declaration subjecting the individual to the laws of the State, are constantly being revoked in the courts as an obstacle to the power of the Government to protect the incompetent Indian by legislation or by litigation instituted in his behalf. Out of abundant caution, therefore, I would suggest the insertion at the end of section 8 of the following proviso: "*Provided*, That the protective powers of the Government of the United States in respect of the said Indians and their property shall not be affected thereby."

A declaration of this sort, though not, in my opinion, necessary, may serve to forestall much useless litigation and controversy.

For the Attorney General.

Respectfully,

ERNEST KNAEBEL,
Assistant Attorney General.

Mr. Clancy, from the Committee on Indian Affairs, submitted the following report (to accompany H. R. 18735):

"The Subcommittee on Indian Affairs, to whom was referred the bill (H. R. 18735) authorizing the allotment in severalty of Indian lands in New York State, and for other purposes, having considered the same, report thereon with a recommendation that the bill be amended as proposed by the Department of Justice and the Department of the Interior and be given further consideration by the whole committee.

"The legislation proposed in this bill is of such vast importance to the Indians of New York State, which has an Indian population greater than any other State east of the Mississippi River, that it should receive the very careful attention, not only of the entire committee but of Congress, and in order that this subject may be thoroughly understood by those interested attention is called to the very complete report of the Office of Indian Affairs, Department of the Interior, as to the whole New York State Indian situation, which follows:

"J. R. CLANCY.
"DENVER S. CHURCH.
"C. M. HAMILTON."

The Lake Mohonk conference on the Indian and other dependent peoples have had for some years a committee on New York State Indians, which at their conference on October 14, 15, 16, 1914, reported as follows:

"Your committee rejoices that in the further advancement of this work a bill was introduced into the House of Representatives on September 10, by Mr. Clancy, of New York, known as bill No. 18735, granting authority to the Attorney General of the United States to institute the necessary suit or suits in the case, providing for the appointment of a commission to appraise the Indian lands and to divide and allot them in severalty, and making the Indians thereafter citizens of the United States and subject to the laws of the State of New York. Your committee recommends that the conference express its approval of the action of the board of Indian commissioners and of the general plan of the House of Representatives bill referred to and that the committee of the conference on the New York Indians be discharged.

"For the committee.

"JAMES WOOD, *Chairman.*
"JOHN J. FITZGERALD.
"CHARLES E. LITTLEFIELD.
"REGIS H. POST.
"DANIEL SMILEY."

The report presented by Mr. Wood was accepted by the conference, and the committee on New York Indians discharged with thanks for its services.

DEPARTMENT OF THE INTERIOR,
Washington, January 22, 1915.

Hon. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. STEPHENS: Reference is again made to your letter of September 16, 1914, transmitting a copy of H. R. 18735, providing for an allotment in severalty of the Indian lands in the State of New York.

Section 1 is designed to confer authority on the Attorney General to institute proceedings to test the validity and extent of the claim of the so-called Ogden Land Co. in and to the lands embraced within any of the Indian reservations in the State of New York, while the remainder of the bill contemplates an allotment in severalty of these lands as they now stand by making the tracts of individual allottees still subject to the claim of the company, if any such exists.

It is not deemed necessary here to go into an extensive résumé of the history of the claim of the so-called Ogden Land Co., as this matter has previously been before the Congress in various forms. (See Senate Executive Document No. 52, Fifty-third Congress, third session, and Senate Executive Document No. 154, Fifty-fourth Congress, second session; also hearings on House bill 1270, Fifty-seventh Congress, and House bill 7262, Fifty-eighth Congress.)

For the information of your committee, however, it may be briefly stated that the Indian reservations in New York consist of the following:

The Allegany Reservation, lying in Cattaraugus County, embracing 30,469 acres, with an Indian population of about 923.

The Cattaraugus Reservation, lying mainly in Erie County with a small part falling also in the counties of Chautauqua and Cattaraugus, embracing an area of 21,680 acres, with an Indian population of 1,291.

The Oil Spring Reservation, containing 640 acres, lying partly within Allegany and partly in Cattaraugus Counties.

The three reservations above mentioned all belong to the Seneca Indians.

The Tuscarora Reservation, embracing 6,249 acres, lies within Niagara County and has an Indian population of 460.

The Tonawanda Reservation, containing 7,549 acres, with an Indian population of 489 members, lies partly in Erie, Genesee, and Niagara Counties.

The Onondaga Reservation, embracing 6,100 acres, with an Indian population of 541, lies in Onondaga County, about 5 miles south of the city of Syracuse.

The St. Regis Reservation, embracing 14,640 acres, lies in St. Lawrence and Franklin Counties, and has an Indian population on the American side of some 1,400 members. The Canadian Government has also provided a reservation for the St. Regis Indians, embracing some 12,000 acres, which adjoins the reservation in New York along the international boundary. The tribe is about evenly divided in population on the American and Canadian sides.

The Shinnecock Reservation on Long Island embraces but 450 acres, with an Indian population of about 400.

The claim of the so-called Ogden Land Co. covers only the Allegany and Cattaraugus Reservations and 1,920 acres of the Tuscarora Reserve, and its origin antedates the Federal Constitution. Shortly after the close of the Revolutionary War a dispute arose between the colonies of Massachusetts and New York over certain territory now embraced in the western part of the latter State, under conflicting grants or charters from the British Crown. The dispute was first submitted to the Continental Congress and a court was appointed to try and determine the cause. It was settled amicably, however, between the two States by convention December 16, 1786. A compact was drawn under which New York retained the right of government, sovereignty, and jurisdiction, but ceded to Massachusetts the right of preemption from the native Indians and such other right as the State of New York had. By a separate article in the compact Massachusetts was empowered to sell, assign, or otherwise convey such title as she derived. This the State of Massachusetts promptly proceeded to do, and the territory in which the Allegany, Cattaraugus, Tuscarora, and Tonawanda Reservations is located was sold by Massachusetts to Robert Morris in 1791. Several mesne conveyances transpired until we find the present claimant to be the Ogden Land Co., so called, which, however, is not incorporated.

Whatever claim the company had in and to the lands embraced within the Tonawanda Reservation was effectually extinguished by payment of the sum of $100,000 in accordance with the appropriation made and authority conferred by article 3 of the treaty with the Tonawanda Indians dated November 5, 1857 (11 Stats., 735). The Tuscarora Indians, who at one time lived in North Carolina, sold their lands in that State about the year 1800, realizing therefrom approximately $15,000. This money was deposited with the United States in trust, and in 1804 Congress authorized the Secretary of War to purchase additional land for these Indians. With this money, 4,329 acres lying to the south and east of 1,920 acres which had previously

been given to them by the Seneca Indians and the Holland Land Co. were purchased from the latter company, which effectually extinguished the preemptive right against these 4,329 acres within the reservation. The Holland Land Co. was the predecessor of the present claimant, the Ogden Land Co.

Much doubt seems to exist even among the courts, if conclusion can be reached from the decisions handed down, as to the exact nature of the claim of the Ogden Land Co.; many decisions holding in effect that the title acquired by the company through purchase from the State of Massachusetts is an "ultimate fee," an "absolute fee," a "naked fee," a "qualified fee," etc. Other decisions tend to hold that the only right acquired by purchase from Massachusetts was simply the right of preemption, or a first right to purchase when the Indians agreed to sell. Persons whose opinions are not without weight have even suggested that the company has no valid claim against these lands, basing their opinion on the ground that New York had no power to sell to Massachusetts nor Massachusetts to convey to its assignees. Be this as it may, we find that the claim has stood and been recognized repeatedly by the courts, both of the State and of the Nation, and it is not seen how the validity of the claim, whatever may be its nature, can well be denied at this late date. The courts of both the Nation and the State have also repeatedly denied the right or power of the claimant company in any way to interfere with the right of possession by the Indians, and for practical purposes the claim of the company is valueless in so far as the production of annual revenue is concerned.

When last approached on the question of disposing of their claim representatives of the company placed what was regarded as a fictitious value thereon. (H. Doc. 309, 54th Cong., 2d sess., and hearings on H. R. 12270, 57th Cong., and H. R. 7262, 58th Cong.) Some effective method of disposing of the claim, however, is desirable, in order that the objects designed to be accomplished by sections 2 to 11 of H. R. 18735 may be worked out.

The department is not prepared to state whether the plan suggested in sections 2 to 11 of the bill is feasible, but in connection therewith invites attention to a decision by the Supreme Court of the State of New York in the case of the Seneca Nation of Indians against Charles E. Appleby, surviving trustee of the Ogden Land Co., which decision will be found reported in 127 appellate division (New York reports), page 770. In its decision in that case the court, through Judge Spring, used the following language:

> The affirmance of the judgment (of the lower court) does not establish the proposition that if the plaintiff becomes disintegrated that the defendant's title will vest in possession at once. Allotment among the individual Indians by the plaintiff has been permitted for a considerable period by the National Government. Inheritance is allowed in accordance with the statutes of the State of New York, and conveyances amongst the Indians are also allowed. It may well be held that even though the nation in its tribal capacity should be dissolved, if the individual Indian holds his land by virtue of this recognized method of allotment, that the occupancy will continue to his remote descendant.

The case was appealed by the Indians and the appellate court in its decision dismissed the entire proceedings on the ground that the Indians were without power to sue and that the courts of the State had not been authorized to hear and determine the case. (196 New York Supreme Court Reports, 318.)

Should the courts find room to hold that the lands within these reservations covered by the claim of the Ogden Land Co. can be allotted in severalty without a vesting of the right of that company to immediate possession it would appear the most feasible solution of the difficulty, in so far as the adjustment of the claims of that company is concerned, but since the introduction of the bill (H. R. 18735) a representative of the Indian Office has visited the reservations in that State with a view of ascertaining present conditions there. It is found that as a matter of fact practically all of the lands within the various Indian reservations in that State have already been allotted in severalty or divided among the tribal members many years ago under State laws by the tribal organizations, and that there is practically no surplus tribal or communal land available for further allotment at this time or for distribution to those younger members of the tribe who are now without land. The tribal division so made has been recognized by the tribal organizations, by the membership at large, and by the courts of the State, until any disturbance of the present claimant would result in great dissatisfaction and no doubt in many cases gross injustice.

Some of the shrewd, far-sighted members of the tribes, by inheritance, by purchase from other members or otherwise, have acquired holdings largely in excess of a pro rata division of these lands among the present tribal membership. These holdings in a large number of cases have been improved with modern homes, excellent barns, and equipped with up-to-date farming implements. Where the title thus acquired has been by inheritance or by purchase it would hardly be just to deprive the present holders of any part of their lands without just compensation therefor. It should be understood, of course, that these people are without power to alienate their lands to persons other than members of the tribe, but sales have taken place between members of the same tribe, in many cases evidenced by deeds placed of record in the proper county, and these transfers and sales have been taking place practically for the last 25 years.

On the other hand, there is a great need for some feasible solution of the problem. Congress by treaty with these Indians has guaranteed them peaceful possession of the soil (treaty of Nov. 11, 1794, 7 Stats., 44), and the Supreme Court of the United States has denied the State the right to tax their lands. (The New York Indians, 5 Wall., 761). The State, therefore, is powerless to compel an adjustment of the situation, has been denied the right to tax, and can take no steps to make these lands subject to taxation without the assent of the Federal Government, yet the State has been under the burden of providing these people with adequate school facilities, maintaining highways over their reservations, and such police supervision as has been exercised over these people which has been greatly deficient. The "Indian population" in New York, recognized as members of the various tribes there, exceeds 5,000, but it has been found on investigation that the number of full bloods among these people is very limited, with possibly even less than 500 half bloods in the entire State, and so many so-called "Indians" with such a large percentage of white blood that only the closest scrutiny would disclose any Indian characteristics.

These people are fully equipped from an educational, civilization, or financial standpoint to stand upon their own feet. They should

have been made citizens by allotment in severalty and the dissolution of tribal organizations years ago. There is great need, therefore, of some workable plan by which this end can be reached, but the limited information as to present conditions on these reservations acquired by the brief examination heretofore made does not place the department in a position to suggest the most feasible course to pursue. A detailed survey of each reservation would be necessary in order to ascertain the present claimant or holder of each acre therein, the manner in which title was acquired, the number of Indians without land and their right to membership in the tribes, etc., before any just solution could be offered. Doubtless the conditions on the different reservations would be found so far at variance that one bill designed to fit conditions on all reservations could not well be formulated. Each reservation should be made the subject of a separate investigation and special study with a view of suggesting some feasible course to pursue with reference to the conditions on that particular reserve.

Again, an extinguishment of the claim of the Ogden Land Co. or a final decision by the courts on the exact extent and nature of that claim appears necessary before further procedure can well be had. With this idea in view it may prove advisable to eliminate sections 2 to 11, inclusive, of the bill, which would enable the Department of Justice to bring about an authoritative determination of the matter. By letter dated September 28, 1914, the Department of Justice submitted to you a report on the bill, but did not raise any specific objection to section 1. It is presumed, therefore, that that department has no objection to offer to the procedure outlined in this section of the bill.

As it is understood that the Indians are uniformly opposed to the disturbance of present conditions and that the provisions of H. R. 18735, found in sections 2 to 11, inclusive, do not accord with conditions on the various reservations in the State of New York, it is respectfully recommended that these sections be eliminated from the bill and section 1 be amended by striking out the period after the word "York," in line 8, and adding thereto the following:

twith the right of appeal to the Supreme Court of the United States by either party do the proceedings, and jurisdiction is hereby conferred on such courts to hear and etermine the cause.

There should also be a provision appropriating sufficient money to enable the Department of Justice to carry out the provisions of the law, but I am not sufficiently advised in the premises to offer a suggestion as to the specific amount.

For the further information of your committee I am inclosing a copy of a report by the representative of the Indian Office detailed to investigate conditions on the Indian reservations in the State of New York; also copy of a petition signed by a number of Tuscarora Indians, protesting against the passage of the bill, which petition was received by the Indian Office on January 12, 1915.

Cordially,

FRANKLIN K. LANE.

WASHINGTON, D. C., *December 26, 1914.*

The honorable the COMMISSIONER OF INDIAN AFFAIRS.

SIR: Assistant Commissioner Meritt, being firmly impressed with the necessity of taking some definite action looking to an effective solution of the New York Indian problem, instructed me orally in the early fall of 1913 "to get to the bottom of it," if possible. Later you authorized me in writing to visit the several reservations in that State so as to present existing conditions there. The question has proven of great interest and increasing importance as the investigation progressed. Mr. Meritt's conviction "that something should be done" is undoubtedly correct, as the facts hereinafter presented will show. Present conditions on these reservations are so directly traceable to the time when this country was first occupied by the Europeans that a brief recourse to colonial history is essential.

Early colonists in what is now western New York found the country more or less densely populated by aborigines of various tribes, principally the Senecas, Cayugas, Onondagas, Oneidas, and Mohawks. These five tribes or nations were united in a common league, known among themselves as Ho-de-no-sau-nee, but generally designated by the whites as "Iroquois," and were much feared during the early days. In the Iroquois council the Onondagas, as the founders of the league, kept the central fire; the Mohawks guarded the eastern portal, and the Senecas the western. The Oneidas were stationed between the central fire and the east, while the Cayugas occupied a similar position in the west. One can but pause to wonder if exploration into ancient traditions of these people would not disclose an organization bordering strongly on free masonry.

About 1710 the Tuscaroras, then living in North Carolina, became involved in quarrels with white settlers and adjoining Indian tribes there. Having been severely defeated in battle they migrated to New York and were formally united with the five tribes just mentioned, thus making the Six Nations of New York, by which name these Indians are now most commonly known. At the period of its greatest strength—the latter part of the seventeenth century—the Iroquois league numbered 15,000 souls, and even to this day the union still continues to some extent, although its component membership as to tribes has materially changed.

With the exception of the Oneidas and a part of the Tuscaroras, these Indians sided with the mother country in the Revolution and were left unmentioned and unprovided for in the treaty of peace between Great Britain and the confederated Colonies. Naturally considerable unrest existed among them at the close of the Revolution, due to the fact that in the main they had sided with the losing party in that great struggle. The Mohawks moved to Canada and settled on lands provided for them by the British Government, where a remnant of this tribe still lives. By treaty the Mohawks ceded to the State whatever title they had to any land in New York, and subsequently the St. Regis Indians were formally adopted by the Six Nations in place of the Mohawks.

The Cayugas also sold their land to the State and gradually migrated westward, locating first in the Ohio Valley, but finally removing to the Indian Territory and becoming affiliated with other tribes there. A few Cayugas still remain in New York, residing principally with the Senecas and Tonawandas—the latter an offspring of the Seneca Tribe—being frequently designated "The Tonawanda Band of Seneca Indians." The State paid the Cayugas at the rate of 4 shillings per acre and thereafter sold the land for 16 shillings per acre. About 1853 representatives of the tribe began to petition the State for the difference in price between the one paid to them and that received by the State. Finally, in 1909, the legislative assembly authorized the land commissioner to adjust and settle the claim of the Cayuga Indians against the State for a sum not exceeding $297,131.20, with an additional allowance of $27,131.20 for legal expenses incurred.

The Oneidas also, by various treaties, sold all of their land, except about 350 acres, to the State, and removed to the reservation in Wisconsin procured from the Menominees by treaty with the Federal Government. The 350 acres in New York belonging to the Oneidas have long since been divided in severalty under State laws, and as a tribe these Indians are known no more in that State. Six tribes still remain in New York, to be regarded as of any importance at this time, viz, the Senecas, Tonowandas, Tuscaroras, Onondagas, St. Regis, and Shinnecocks, the latter, however, never having formed a unit in the Six Nations, although at one time they did pay tribute to the Mohawks. A brief statement as to the status of the lands in each reservation is here presented in order that a clearer understanding of the matter may be reached.

The Allegany Reservation, claimed by the Senecas, contains 30,469 acres, and is located on both sides of the Allegany River in Cattaraugus County, N. Y. It is

about 40 miles long and averages from 1 to 3 miles in width. It is a part of the area specifically reserved to the Seneca Indians in the treaty with Robert Morris at "Big Tree" September 17, 1797. This entire reservation is subject to the "preemption right" or "claim" of the Ogden Land Co., to which reference is hereinafter more fully made.

The Cattaraugus Reservation contains 21,680 acres, located principally in Erie County, a small part lying in each of the counties of Cattaraugus and Chautauqua. This reservation was conveyed to the Seneca Indians by Wilhelm Willnick, et al., predecessors of the Ogden Land Co., by agreement dated June 30, 1802 (7 Stats., 70), in return for which the Seneca Indians surrendered to the company certain other lands which had been reserved to them by the treaty at Big Tree. This reservation is also subject to the preemption right of the Ogden Land Co., such right being specifically retained in the agreement referred to.

The Oil Spring Reservation, located partly in Allegany and partly in Cattaraugus Counties, contains only 640 acres. Its name is derived from a muddy pool, about 20 feet in diameter, located near the center of the tract, from which the Indians formerly gathered a sort of crude petroleum locally known as "Seneca oil," and which was used quite extensively by them in early days for medicinal purposes. The Senecas fully understood that this tract was reserved to them in the sale to Robert Morris at Big Tree, but this fact does not appear from an examination of the treaty itself. At any rate, this reserve was included in a sale by Robert Morris to the Holland Land Co., so-called, and several mesne conveyances transpired until by deed dated February 28, 1855, one Philoneus Pattison became the ostensible owner of a part thereof. On taking possession, the Seneca Indians promptly began an action in ejectment against Pattison. A verdict in favor of the Indians was rendered by the lower court; the case was appealed to the supreme court of the State and finally to the court of appeals, both of which affirmed the decision of the trial court, and the Indians have since remained in undisturbed possession. A written opinion of the case does not appear to have been handed down, but the pleadings, transcript of evidence, judgment, and decree of the court are still on file in Little Valley, the county seat of Cattaraugus County.

The Onondaga Reservation contains 6,100 acres and is located in Onondaga County about 5 miles south of the city of Syracuse. Prior to 1793 this reservation embraced something over 65,000 acres. March 11 of that year, however, the Indians sold over three-fourths of their reservation to the State, and by subsequent treaties in 1795, 1817, and 1822 the reservation was reduced to its present area. Under State laws these Indians are authorized to lease land owned or possessed by individuals and small areas within the reservation are so leased. The lands within this reservation are not covered by the claim of the Ogden Land Co.

The Tonawanda Reservation now comprises but 7,549 acres lying partly in Erie, Genesee, and Niagara Counties. Originally it comprised upward of 45,000 acres, being a part of the lands reserved to the Seneca Indians in the sale to Robert Morris at Big Tree. This reservation was conveyed to Thomas Ludlow Ogden and Joseph Fellows by agreement with the Six Nations, dated January 15, 1838 (7 Stats., 550), and the subsequent treaty with the Senecas of May 20, 1842 (7 Stats., 586). The lands embraced within the present reserve were repurchased from Ogden and Fellows for the sum of $100,000, in accordance with article 3 of the treaty with the Tonawanda Indians, dated November 5, 1857 (11 Stats., 735). Title was first taken in the Secretary of the Interior, who held the lands until February 14, 1862, on which date, by deed, they were conveyed to the comptroller of the State of New York "in trust and in fee for the Tonawanda Indians." This settlement effectually extinguished whatever preemption right the Ogden Land Co. ever had in and to the lands within this reservation.

The Tuscarora Reservation lies in Niagara County about 9 miles northeast of Niagara Falls, and contains 6,249 acres. The Tuscarora Indians having been adopted by the Iroquois League as one of the Six Nations, by deed dated March 30, 1808, the Seneca Nation granted 1 square mile (640 acres) to the Tuscarora Indians. (Liber 1, folio 56, Land Records of Niagara County.) It is reported that subsequently the Holland Land Co., assignee of Robert Morris, "ratified" this grant, and gave to the Tuscaroras 1,280 acres more, but no record of any paper title to this effect can be found. At any rate, the Tuscaroras occupy and claim these lands as a part of their present reserve, which are subject to the preemption right of the Ogden Land Co. (7 Stats., 560), although the Indians deny this, basing their claim on a decree of the State court in Buffalo, handed down in 1850. This suit resulted from an agreement with the Federal Government, January 15, 1838, under which the Six Nations were to remove west of the Mississippi River, and in anticipation of their removal the chiefs of the Tuscarora Tribe executed a deed to Thomas Ludlow Ogden and Joseph Fellows, predecessors

of the Ogden Land Co., conveying to said Ogden and Fellows, as owners of the pre emptive right, the 1,920 acres last referred to. The deed was placed in the hands of Herman B. Potter, in escrow, pending the performance of certain conditions precedent to delivery. The expected removal failed to materialize and in 1849 Wm. B. Chew et al., chiefs of the tribe, instituted suit against Herman B. Potter and Joseph Fellows (Thomas L. Ogden then being deceased), looking to a surrender and cancellation of the deed. A verdict in favor of the Indians was rendered and the deed canceled by decree of the court, which resulted only in placing the matter in statu quo, as far as the preemptive right of Ogden and Fellows was concerned. The execution of the deed was an admission of the existence of the preemptive right, and the contention of the Indians that the decree of the court canceling the deed also effectually extinguished the right of preemption in the Ogden people does not appear well founded. The records in the case are still on file in the county clerk's office at Buffalo.

About the year 1800 a delegation of Tuscarora Indians visited the governor of North Carolina and negotiated a sale of their lands in that State for approximately $15,000, which money was deposited with the United States in trust. In 1804 Congress authorized the Secretary of War to purchase with this money additional land for these Indians. With these funds 4,329 acres, lying to the south and east of the 1,920 acres already occupied by them, were purchased for the Tuscarora Indians. Title to these lands was taken by the Secretary of War in trust for the Indians, but subsequently (January 2, 1809) the lands were conveyed directly to the Tuscarora Tribe, who now own the fee. (Book "A," p. 5, Niagara County clerk's office.)

The St. Regis Reservation contains 38,890 acres, of which 24,250 acres fall within the Dominion of Canada. The remaining 14,640 acres on the American side lie in Franklin County, N. Y., and were secured to these Indians by treaty with the State, in consideration for which they surrendered certain other lands claimed by them. The Ogden Land Co.'s claim never comprised any part of the lands within this reserve.

The Shinnecock Reservation, containing some 450 acres, is located on a neck of land running into Shinnecock Bay, Long Island. Southampton was an early colonial town, established in the seventeenth century, and the town trustees negotiated with "Shinnecock," chief of the tribe, for a sale of the lands. Tribal tradition has it that the chief sold out to the whites and skipped with the money. While this does not comport with accepted ideas of the honesty and integrity of aboriginal chiefs, yet it is a matter of record that the town trustees of Southampton in the early days gave a lease for a thousand years to the Shinnecock Indians covering some 3,600 acres, known as the Shinnecock Hills and Shinnecock Neck. Matters stood thus until about the middle of the nineteenth century, when the town had developed to such an extent that a more satisfactory arrangement was desired. Accordingly, in 1859 the State authorized the town trustees to negotiate with the Indians for a cession of their leasehold estate. An agreement was reached, under which the Indians surrendered the hills, in exchange for which they received in fee Shinnecock Neck. The agreement is recorded in volume 3 of the town records of Southampton, at page —.

The above covers all of the reservations in New York to be regarded as of any importance at this time, but in passing mention may be made of the Poosepatucks, of mixed Indian and negro descent, who did occupy a small reservation of about 50 acres also on Long Island, near the mouth of the Mastic River, being a part of the tract of 175 acres conveyed to the tribe by Col. William Smith, governor of the Territory, July 2, 1700, "to the intent sayd Indians, their children and posterryte may not want sufficient land to plant on forever." Also the Montauk Tribe who occupied Montauk Point, the northeastern extremity of Long Island, which was included in a patent issued in 1686 by Governor Dongan to "the freeholders and inhabitants of the town of East Hampton." This grant was made subject to the Indian right of occupancy, but also carried "the perpetual and exclusive right to purchase same from the Indians." Within comparatively recent years the remnant of this tribe sold their title to this land to one Benson, and these Indians, as a tribe, no longer exist as such, having individually become absorbed in the body politic. Pharoh *v.* Benson (69 Miscl., N. Y., 241). These Indians also intermarried so largely in the early days with negroes that their nationality as "Indians" became extinct long ago.

The Cornplanter Reservation in Pennsylvania lies just below the line between New York and the former State. The reservation originally comprised 1,500 acres "granted in fee" by Pennsylvania March 16, 1796 to Cornplanter and his heirs. Subsequently, in 1871, the State authorized the appointment of commissioners to divide these lands in severalty among "Cornplanter's descendants and other Seneca Indians." This was done and the land was divided and allotted to 93 Indians, without power, however, to sell to persons other than descendants of Cornplanter, or other Seneca Indians.

These small reservations, used in common, afforded only a haven of refuge to possibly otherwise homeless persons and for all practical purposes may be eliminated from further consideration. The same might also be said of the Oil Spring Reservation, containing as it does, but 640 acres, retained by the Indians in the early days largely from sentimental reasons.

Conditions on the remaining reservations show a crying need for reform. Naturally one casts about for the reasons why these conditions should have so long been permitted to continue. First among these we find the question of jurisdiction over these Indians, State and Federal. Much needless confusion exists, a pretty general impression prevailing that the State has exclusive jurisdiction. This seems to have arisen from two causes, first, because New York was one of the Thirteen Original Colonies and the "title" to the lands involved never was in the Federal Government, and secondly, because the State has exercised jurisdiction, while the Federal Government, to a large extent, has not. A brief examination of the fundamental principles involved should remove any doubt on this point.

A common cause united the colonists in a supreme effort for independence, and the successful termination of the Revolution, together with the attendant treaty of peace, vested full powers of jurisdiction, sovereignty, and government in the 13 original colonies. Dissension immediately arose to such an extent that 13 independent nations seemed imminent rather than one. The interlacing web represented by the Articles of Confederation was not sufficiently strong to weave the dissenting colonies into a satisfactory whole. The independent colonies had too much power and the central government too little. This is a matter of history, well established. By the adoption of the Federal Constitution the colonies ceded to the General Government certain well-defined powers. functions, and duties, among which we find the regulation of commerce with foreign nations, among the several States, and with the Indian tribes. (Constitution, Art. I, sec. 8.)

After the adoption of the Federal Constitution in 1787 several of the colonies ceded to the Federal Government certain parts of the territory covered by their respective charters from the British Crown. This territory formed the first land the actual title to which was recognized as being in the Federal Government. This area was greatly increased from time to time, as by the Louisiana purchase in 1803, the Floridas in 1819, the Gadsden purchase in 1853, the Alaska purchase in 1867, and others. This vast territory comprises what has since been known as "the public-land States," the title to which was recognized as being in the United States.

New York not having ceded to the Federal Government the lands within her present borders, the actual title is not in the Federal Government, and as to land not otherwise disposed of by the State the title still remains there. Were it not for the fact that we are here dealing with "an Indian problem" the Federal Government would have practically nothing to do with the so-called "reservations" in that State. Having joined with her sister States, however, in the adoption of the Constitution, New York is bound to recognize the powers formally ceded to the nation. One of these is the regulation of commerce with Indian tribes, which surely is broad enough to cover traffic in lands occupied or claimed by them. Again, the admission of power in Indian tribes to barter, without the consent of the Federal Government, such title as they may have to any lands within the geographical limits of the United States, is repugnant to the fundamental principles of sovereignty so essential to the preservation of a nation. This is true, even though the actual title is not in the Federal Government. (Johnson *v.* McIntosh, 8 Wheat., 543; Wooster *v.* Georgia, 6 Pet., 515; Cherokee Nation *v.* Georgia, 5 Pet., 1.) Congress at an early date fully recognized the necessity for this. (Act Mar. 30, 1802; 2 Stats., 143, sec. 12.) Could we afford to admit the right of an Indian tribe to sell their land within our borders to a foreign country?

By acts of Congress and judicial construction the power of the Federal Government over questions dealing with Indians has grown infinitely stronger. Apparently this has been a product of necessity rather than any express delegation of authority to be found in the Federal Constitution. From time to time New York has enacted sundry laws pertaining to the Indians within her borders, has provided schools for their youth, appointed attorneys to protect their interests, and has delegated jurisdiction in some instances to her courts to entertain their complaints. No case has been found denying the right of the State so to do, or that the laws so enacted are unconstitutional. On the other hand, numerous cases could be cited, if necessary, upholding the validity of such laws, where they do not conflict with the Federal Constitution, treaties with Indian tribes, or congressional enactments. (New York *v.* Dibble, 21 How., 366.) In brief, the principle involved may be broadly stated, that all State laws beneficial to Indians will be upheld, while those of a detrimental nature will be scrutinized with greater care.

In internal matters of this kind, wherever the Nation remains passive, then the State of necessity must become active. In truth, the Indians in New York occupy a somewhat peculiar status, in that they may be said to be wards of both the Nation and the State. Jurisdiction seems concurrent rather than exclusive, and in passing it may be said that the State has always been generous in dealing with these people. Judging from concrete results, the Federal Government has manifested but slight interest in the affairs of these Indians. Its greatest shortcoming has been by omission rather than by commission. The New York Indian problem should have been history long since. One hundred and twenty-seven years have passed since the adoption of the Federal Constitution, and we find these people to a large extent in the same position they occupied in the early days, at least in so far as their land tenures are concerned. Apparently the State has waited for the Nation and the Nation for the State. Has it never occurred to either to cooperate?

Originally the Federal Government dealt with the Indian tribes as quasi, or de facto nations, by treaty. Later Congress deemed it incongruous to deal with these people by such formal means as treaties, which implied equality, and directed that thereafter their affairs would be regulated by legislation only. (Act March 3, 1871, 16 Stats., 566.) The power of Congress so to do has been fully recognized, even to the extent of abrogating by legislation the provisions of a prior treaty with an Indian tribe. (United States *v.* Kagama, 118 U. S., 375; Lone Wolf *v.* Hitchcock, 187 U. S., 553.) February 19, 1875 (18 Stats., 330), Congress passed an act to regulate leases by the Seneca Indians in New York. September 30, 1890 (26 Stats., 558), the prior act was amended in certain respects. The control of Congress over the subject matter was most strongly upheld in Ryan *v.* Knorr (19 Hun., 540), and Shongo *v.* Miller (45 A. D., 339). Need more be added to show jurisdiction in the Federal Government over the Indian tribes in New York? The one case of Fellows *v.* Blacksmith (19 Howard, 366), would be amply sufficient to prove this.

Congress having assured the Six Nations peaceful possession of their reservations (7 Stats., 44), and the Supreme Court having denied the State the right to tax their land (The New York Indians, 5 Wall., 761), the hands of the State are effectually tied in so far as working out a feasible solution of the problem is concerned. We have just seen that prior treaties may be superseded by subsequent legislation, but this power rests solely with Congress. Certainly it does not exist in the State. Just when, in what manner, and to what extent this power is to be exercised, therefore, rests in the sound discretion of Congress. Presumably the power will be exercised only after full considerations of humanity and public policy.

It has heretofore been shown that the actual title—the fee—in the St. Regis and Onondaga Reservations is in the State, that of the Tonowanda Reservation is in the comptroller of the State, and as to the Shinnecock and 4,329 acres of the Tuscarora Reservation it is in the respective tribes. Aside from the locus of the actual title, however, we have also found that the Indians' right of possession is an indefeasible one which can not be disturbed without the sanction of the Federal Government. (Fellows *v.* Blacksmith and The New York Indians, supra.) As to the locus of the fee of the Allegany, Cattaraugus, and 1,920 acres of the Tuscarora Reservations, we are confronted with a more difficult problem, these lands being subject to the "claim" of the Ogden Land Co., so-called—a claim of such a peculiar nature that a short recourse to colonial history is again necessary.

By charters in 1628–29 James I, King of England, granted certain land in the new continent to the Plymouth Colony. March 12, 1664, Charles II likewise granted certain land to the Duke of York. Owing to the deficient geographical knowledge of the then new country, the descriptions in these grants were more of less vague, and in many cases overlapped. Massachusetts succeeded to the title of the Plymouth Colony and shortly after the close of the Revolution a dispute arose between that State and New York over the ownership of certain territory aggregating upward of 6,000,000 acres located in the western part of the latter State. The controversy was first submitted to the Continental Congress and a court was appointed to hear and determine the cause. The matter was finally adjusted, however, without resort to the court, a convention for this purpose having been held at Hartford, Conn., December, 1786, New York being represented by 6 commissioners and Massachusetts 10. A compact or agreement was drawn and duly executed December 16, 1786. By this compact New York retained the right of government, sovereignty, and jurisdiction over the disputed territory, but ceded to Massachusetts the right of preemption of the soil from the native Indians, coupled with the power to sell or assign such right.

Massachusetts proceeded promptly to dispose of its title and in April, 1788, Oliver Phelps and Nathaniel Gorman negotiated with that State for the purchase of the entire area for $1,000,000, payable within three years in public paper of the State, a kind of scrip which was then greatly depreciated. Phelps and Gorman failed to

comply in full with their agreement and subsequently Massachusetts brought suit to recover title. A compromise agreement was effected, however, under which Phelps and Gorman obtained a clear title to about 1,900,000 acres of the original area, the remainder being again relinquished to the State. March 8, 1791, Massachusetts conveyed to Robert Morris for $225,000 the land which Phelps and Gorman had failed to acquire. Morris retained 500,000 acres of this land, which thereafter became known as "The Morris Reserve," and by four separate deeds in 1792–93, conveyed the remainder, aggregating 3,600,000 acres, to a company of Amsterdam capitalists, among whom Wilhelm Willnick was the largest owner. These conveyances from Morris were coupled with an agreement on his part to extinguish the Indian title, which he promptly endeavored to do and which finally resulted in the agreement or treaty of Big Tree, September 15, 1797 (7 Stats., 601).

The Amsterdam capitalists subsequently became known as the Holland Land Co., and in 1810 the company conveyed to David A. Ogden certain described lands, embracing an area within which will be found the present Allegany, Cattaraugus, and Tuscarora Reservations. Ogden later associated other capitalists with him and the combination became known as the Ogden Land Co., title to all lands acquired being taken in the name of certain members, in trust for the company, which, however, was not incorporated. Later a trust deed was executed under which the holdings of the company were divided into 20 shares of no specified value. A dispute having arisen among the shareholders, suit was instituted, in which a part of the joint owners were plaintiffs, the remainder being defendants. December 10, 1883, a decree was entered in the Supreme Court of Queens County, N. Y., designating Charles E. Appleby, of New York, a trustee, and William D. Waddington as co-trustee of the concern. Waddington died prior to 1888, leaving Charles E. Appleby sole surviving trustee of the company, who served until the latter part of 1913, when he also died. Who now represents the company in an official or legal capacity is not known, but in 1894 the owners of these 20 shares were reported to be:

	Shares.
Estate of Joshua Waddington	4
Estate of Peter S. Schermerhorn	1
Estate of Thomas Ludlow Ogden	2
Estate of Louisa Troup	1
Estate of Abraham Ogden	1
Estate of Robert L. Tillotson	1
Estate of Duncan P. Campbell	1
Estate of Charlotte Brinckerhoff	1
Estate of James S. Wadsworth	1½
Estate of Ogden Murray	0½
Estate of Benjamin W. Rogers	2
Estate of Robert Bayard	1
Charles E. Appleby	1
Estate of Shaw and Wilson, now held by Bank of England	2
Total	20

The nature and extent of the claim of the Ogden Land Co. still remains to be considered, however. This claim has received various designations, having grown, in the estimation of the company, from an original right of preemption to that of an absolute fee. Many theories have been advanced as to its exact nature and the decisions of the State courts before whom this matter has been brought are not conducive to a clear understanding of the case. Much fruitless labor seems to have been expended in an effort to determine the locus of the fee, presumaby due to the old common-law fiction that necessarily the fee must be in some one. That this is merely a fiction, however, is apparent from a moment's consideration. In whom is the fee to an uninhabited and undiscovered island in the Pacific Ocean? On discovery does the fee arise and hail the discoverer as a deliverer?

Ogden *v.* Lee (6 Hill, 546) would indicate that the fee to these lands is in the Seneca Nation, subject to the preemption right ceded to Massachusetts by the State of New York. Fellows *v.* Lee (5 Den., 628) affirmed the decision of the lower court on the ground that the Indian title to land is an absolute fee, and that the preemption right ceded to Massachusetts was simply the right to acquire by purchase whenever the Indians choose to sell. In Seneca Nation *v.* Christie (126 A. D., 322) and Seneca Nation *v.* Appleby (127 A. D., 770) the preemption right to the Ogden Land Co. seems to have matured into what has variously been styled a "fee subject to the Indian right of occupancy," "qualified fee," "naked fee," "ultimate fee," etc. But little satisfaction is obtained from examining these various decisions with a view of deter-

mining just where the fee in these lands lies. Neither does a process of elimination produce a more satisfactory result. Necessarily four parties are to be considered in the matter, the Indians, the Nation, the State, and the Ogden Land Co. The doctrine of discovery, as laid down in Johnson *v.* McIntosh (supra), does not recognize an absolute fee in an Indian tribe, their right being that of possession only. We have heretofore seen that the absolute fee was never placed in the Federal Government; nor is it in the State of New York, the latter having ceded all right and title, except that of sovereignty and jurisdiction, to Massachusetts. Massachusetts parted with whatever title it acquired, and we find the present claimants to be the Ogden Land Co. It is well, therefore, to examine with greater care the compact between Massachusetts and New York. The second and tenth articles read:

"Secondly. The State of New York doth hereby cede, grant, release, and confirm to the said Commonwealth of Massachusetts, and to the use of the Commonwealth, their grantees, and the heirs and assigns of such grantees forever, the right of preemption of the soil from the native Indians, and all their estate, right, title, and property (the right and title of government, sovereignty, and jurisdiction excepted) which the State of New York hath of, in, or to (description of land involved follows).

"Tenthly. The Commonwealth of Massachusetts may grant the right of preemption of the whole or any part of the said lands and territories to any person or persons who by virtue of such grant shall have good right to extinguish by purchase the claims of the native Indians: *Providing, however*, That no purchase from the native Indians by any such grantee or grantees shall be valid unless the same shall be made in the presence of and approved by a superintendent to be appointed for such purpose by the Commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the Commonwealth of Massachusetts."

In construing the foregoing in Ogden *v.* Lee (supra), the court said:

"In the adjustment of the conflicting claims of the States of Massachusetts and New York to the tract of country which includes the Cattaraugus Reservation, Massachusetts ceded all her right to 'the government, sovereignty, and jurisdiction of the disputed territory,' and New York ceded 'the right of preemption of the soil from the native Indians.' The words which follow—'and all other the estate, right, title, and property which the State of New York hath'—were not intended to enlarge the grant into an unqualified fee. It is impossible to suppose the parties meant to disregard and set aside the Indian title, which they had but the moment before fully recognized by contracting for 'the right of preemption of the soil from the native Indians.' This point is rendered still more clear by a subsequent clause in the deed of cession. By the tenth article the Commonwealth of Massachusetts was authorized to grant 'the right of preemption,' and nothing more; and her grantees were only to acquire 'good right to extinguish by purchase the claim of the native Indians.' * * * Their right (the Indians') is as perfect now as it was when the first European landed on this continent, with the single exception that they can not sell without the consent of the Government. The right of occupancy to them and their heirs forever remains wholly unimpaired. They are not tenants of the State, nor of its grantees. They hold under their own original title. The plaintiffs have acquired nothing but the right to purchase whenever the owners may choose to sell."

The doctrine laid down in the foregoing appears sound. In any event, by eliminating the State and Federal Governments, in neither of whom it seems the fee exists, and placing in juxtaposition the "title" of the Indians against that of the Ogden Land Co., we instantly recognize the stronger—the Indians. The courts of both the Nation and the State have repeatedly denied the right of the assignees of Massachusetts in any manner to interfere with the right of the Indians to the peaceful and continued possession of their soil. We dismiss, therefore, from further consideration any attempt to determine the locus of the fee, and admit, for all intents and purposes, that it lies dormant and will remain dormant until present conditions are changed. Some workable plan under which these conditions may be ameliorated is of far greater import either to the Nation, the State, or the Indians, than any fruitless pursuit of the locus of the fee.

The Indians deny that the Ogden Land Co. has any valid claim to their lands, but the convention between Massachusetts and New York involved upward of 6,000,000 acres and the validity of the original grant to Massachusetts, and the subsequent sale by that State has been too long recognized and upheld by a long line of court decisions to justify any attempt to repudiate the transaction at this late date. The title to millions and millions of dollars worth of property in the western part of New York is based primarily on the convention between the two States. It is not seen how the courts could repudiate it. In fact, it appears to have been confirmed by the National Government. (Seneca Nation *v.* Christie, 162 U. S., 284–285.)

Various attempts have been made from time to time to adjust the claims of the Ogden Land Co., but without success. The act of August 15, 1894 (28 Stats., 301), directed the Secretary of the Interior to investigate the claim of the company, which investigation was had and report submitted to the Fifty-third Congress, third session. (Senate Executive Document No. 52.) Later, by act of March 2, 1895 (28 Stats., 887), the department was authorized to negotiate with the Ogden Land Co. for the purchase of its claim, which investigation was also had and report submitted to Congress under date of February 20, 1897. (House Document No. 309, 54th Cong.) Later, bills were introduced looking to a settlement of the matter (H. R. 12270, 53d Cong., and H. R. 7262, 54th Congress), both of which failed of enactment.

Matters thus stood until about 1905 when the Seneca Indians instituted suit against Charles K. Appleby, surviving trustee, for the purpose of testing the extent and validity of the Ogden Land Co.'s claim. This resulted in a decision by the Supreme Court of the State of New York virtually recognizing the ultimate fee as being in the Ogden Land Co., with right of possession in the Indians. As to the title of the Ogden Land Co., the decision of the court is not of great import; but one suggestion made by the court in its decision is of great interest at this time:

"The affirmance of the judgment (of the lower court) does not establish the proposition that if the plaintiff becomes disintegrated that the defendant's title will vest in possession at once. Allotment among the individual Indians by the plaintiff has been permitted for a considerable period by the National Government. Inheritance is allowed in accordance with the statutes of the State of New York, and conveyances amongst the Indians are also allowed. It may well be held that even though the nation in its tribal capacity should be dissolved, if the individual Indian holds his land by virtue of this recognized method of allotment, that the occupancy will continue to his most remote descendant."

In effect, this would intimate that the courts may find room to hold that allotment of these lands among the Indians will not result in a disintegration of the tribe, or a vesting of the right of the Ogden Land Co., if any such right exists. In other words, the lands may be allotted to individual members of the tribe and still remain subject to the claim or right of the Ogden Land Co. This seems to be the basis on which recent proposed legislation by the National Government is founded (H. R. 18735, 63d Cong., 2d sess.). Whether that contention is sound, remains yet to be seen. In either event, no matter in what form this question is adjusted, the prospect of its ultimately being thrown into the courts for decision is exceedingly strong. The representatives of the Ogden Land Co., when last approached, placed what was regarded as a fictitious value on their claim. If any compulsory method of settlement is invoked, as by condemnation, it would necessitate the institution of proceedings, with the Government acting as party plaintiff. Doubtless if the lands are allotted subject to the right of the Ogden Land Co., representatives of that company would promptly institute suit to test the power of the Federal Government so to do, or the validity of the allotment so made; basing their claim on the theory that the "ultimate fee" rests in them, and the dissolution of the tribal organization by allotment vests full title in the company.

However, it is not seen how the power of the Federal Government to enforce a division of these lands among the tribal membership can be denied. If whatever title the tribe has to specified areas within these reservations is placed by authority of Congress in individual members, who would deny the power of Congress so to do? If such action is had and the Ogden Land Co. or its assignees institute proceedings to test the right of the individual Indians, necessarily the Government must stand behind the Indian to defend his title.

The Indians not being satisfied with the decision found in The Seneca Indians *v.* Appleby (127 A. D., 770), the case was appealed, and the appellate court of New York dismissed the proceedings on the ground that the Indians were without power to sue and that the lower court was without power to try and determine the cause (196 N. Y., 318). This virtually nullified the decision of the lower courts and leaves the matter still at large. After examining the numerous decisions by the State courts relating to this matter, it is with great satisfaction one reviews the last case before the appellate court of the State and finds therein the following:

"Nor is it at all a subject of regret that we find that the action can not be maintained. On the contrary, we think it eminently wise of the legislature not to have authorized a determination now of questions which may not arise until the remote future, and whose determination, when they arise, may be seriously affected by considerations we can not now foresee. * * * The respondent contends that the rights of the Indians will not survive the dissolution of the nation or tribal existence, while the learned judge of the appellate division is of opinion that the rights continue as long as the lands are actually occupied by Indians of the tribe, whether the tribe as an entity

continues to exist or not. * * * The question had much better be left till the nation or tribe becomes disintegrated, when the courts of that day will doubtless be competent to deal with it, as well as with the whole question of what rights, if any, the defendant or his successors in interest have in the lands embraced in these reservations."

Did the framers of the compact between Massachusetts and New York ever dream of the future difficulties being stored up when they conceived the plan of divorcing the right of preemption from that of sovereignty?

The claim of the Ogden Land Co. has stood continuously as an effective stumbling-block to a ready solution of "the New York Indian problem." The company has not heretofore been disposed to place a reasonable value on its claim, and the payment of an exorbitant price should not be considered, in view of the doubtful nature of that claim. Within recent years many of the Indians have manifested a strong tendency to object to any disturbance of that claim. After the decision of the appellate court, holding that they were without capacity to sue, the tribe applied to the State legislature and by that body was granted the requisite authority. The matter was dropped at that point, however, as the Indians began to fear that any disturbance of the claim would result in a speedy allotment in severalty, a dissolution of their tribal organizations, and the assumption of full responsibilities of citizenship. In other words, the claim has acted as a blanket to protect them from these ultimate ends, which they do not appear to desire. As matters now stand they enjoy the full benefits accorded other residents of the State, such as adequate school facilities, excellent highways constructed within their reservations at the expense of the State, yet at the same time their property is exempt from taxation and the Indians are not bound by financial obligations arising under contracts. From a personal or selfish standpoint, therefore, why should they desire a change?

At its own expense the State maintains 33 schools exclusively for Indians and employs 37 teachers therein. If the State is denied the right to tax their lands, should it be expected to support, protect, and educate the Indians? Has the nation been altogether fair to the State in this matter? Should not this be a burden upon the nation rather than the State? If the nation denies financial responsibility, should the State be denied the right to tax or to take such other steps as may be necessary to solve the problem?

By invitation, from time to time, the State legislative assembly has invited these people to divide their lands in severalty, and the courts of the State have respected, as fully as possible, the division so made. Beyond this the State could not go, as the Nation has guaranteed these people peaceful possession of their soil. The State has been without power to compel a division of their lands, as this power is peculiarly vested in the Nation.

March 21, 1888, the State legislative assembly appointed a committee of five to investigate the Indian problem in New York, and the report of that committee, with extensive exhibits, covering some 410 pages of printed matter, was presented to the assembly under date of January 31, 1889. Much valuable data can be gathered from that report, and the specific recommendations made by that committee are not without interest even at this time. They read:

1. That a compulsory attendance school law be enacted.

2. That the legislature request the General Government to take action to extinguish the claim of the Ogden Co. to the lands of the Senecas and that portion of the Tuscaroras covered by it.

3. That the lands of the several reservations be allotted in severalty among the several members of the tribe, with suitable restrictions as to alienation to whites, and protection from judgments and other debts; but such division not to go into effect as to lands affected by the Ogden Co.'s claim until that claim be removed. This allotment in severalty ought not to be limited to a division of the possession of the land, but should comprise a radical uprooting of the whole tribal system, giving to each individual absolute ownership of his share of the land in fee.

4. The repeal of all existing laws relating to the Indians of the State, excepting those prohibiting sale of liquors to them and intrusion upon their lands, the extension of the laws of the State over them, and their absorption into citizenship.

The State subsequently enacted and has with a reasonable measure of success enforced a compulsory attendance school law, but as to the other recommendations they stand to-day practically as when made 26 years ago. How much longer must the State await the pleasure of the Nation in offering a solution of the problem? That present conditions should be permitted to continue indefinitely on these reservations would be a shame upon the Nation and a disgrace to the State. In a majority of these tribes the infusion of white blood has been so great that out of an "Indian" population of over 5,000 in the State one will find scarcely a single full blood, less than 500 half bloods, and a great number with so much white blood that only the closest scru-

tiny of a keen observer will disclose any Indian characteristics. The remnants of the former tribes on Long Island have intermarried so largely with negroes that their present descendants are more nearly negro than Indian. All of these people deserve but scant sympathy, therefore, as "Indians," although any adjustment of their affairs should be based on sound principles of justice and humanity. A large percentage of them have reached a comparatively advanced stage of education and civilization along certain lines. Many of them are progressive, shrewd, keen, business men with large land holdings, fine homes, excellent barns, up-to-date farming implements, and in a number of cases even automobiles. On some of these reservations marriage to a large extent consists of bnt cohabitation and divorce but separation at pleasure. In the midst of thriving communities, in some cases adjacent to large cities, the continuance of such conditions is abhorrent to the finer sensibilities of civilized mankind. The cause should have been removed long since and no doubt would have been had the power existed in the State to force an effective solution of the problem.

Nothing in the foregoing should be construed as intending to imply that these reservations are hotbeds of iniquity or corruption. Among these people will be found many upright, honorable men and women, who are law-abiding, self-respecting inhabitants, but the lax enforcement of the law on these reservations allows the unruly element full license to do pretty much what they please. Being powerless to dissolve the tribal organizations and to compel a division of the lands among the Indians, the State could only abide in patience the time when either the Nation would remove the obstacles or the Indians voluntarily agree to a relinquishment of their title. Thus the tribes to a large extent have been left to themselves, both by the Nation and the State, in so far as police supervision and internal government is concerned. Doubtless the State has been influenced in its action by the doubtful question of jurisdiction and the superior power of the Federal Government over the subject matter.

One of the most serious difficulties, however, presented in connection with a solution of this matter lies in the fact that to all intents and purposes these reservations were "allotted" years ago. The Indians under their tribal government have divided the lands among themselves; valuable improvements have been erected, and transfers have been made by sale, purchase, gift, or otherwise, until the present claimants are confirmed in their respective holdings by recognition of the tribal officers, by the tribal membership at large, and even by the State courts, who have upheld such transactions. Shrewd members of the various tribes in many cases have acquired land holdings many times in excess of the number of acres to which they would be entitled under a present pro rata division. Naturally, to a man, such owners are opposed to any settlement which would not recognize and confirm their present possession, the title to which they could in many cases prove by inheritance or purchase for valuable considerations. Cases may be found, of course, where the acquisition would not bear the light of close investigation, but in the majority of cases it will be found that rightful inheritance or the payment of adequate consideration has been the basis of the "title" over and above the acreage to which the present owner would be entitled under a pro rata division.

Those members of the tribes who possess no land naturally are in favor of a division of the tribal property. If their right as a member of one of these tribes is worth anything in dollars and cents they want it, and the faction of the tribes favoring a division is composed largely of this class. A few, having in their possession only the approximate number of acres to which they would be entitled in case of a pro rata allotment, or who have a family with sufficient members to absorb the entire area now occupied, would be very glad to receive ultimate title with power to convey, to outsiders, as on practically every reservation such power, coupled with their present title, would practically double the per acre value of their lands which, even at this date, is by no means inconsiderable.

The lands of the St. Regis Reservation are fertile farming lands and many of these Indians are expert dairymen. The Tuscarora Reservation lies within one of the most fertile parts of the State of New York and the lands there are very valuable both for agricultural and fruit-raising purposes. The Shinnecock Reservation on Long Island is not of an exceedingly high value for agricultural purposes, yet these lands are so beautifully situated on Shinnecock Bay—a small arm of the Atlantic Ocean—that to-day they have an actual value of approximately $2,000 per acre for building-site purposes. Many wealthy people from New York City and elsewhere have built fine summer houses in Southampton, which is but 2 miles distant from this reserve and within which unimproved land is worth about $5,000 per acre at this time. On the Onondaga, Tonawanda, Allegany and Cattaraugus Reservations the valley lands are very fertile, and have been improved and cultivated for many years past. Any timber of commercial value on the hills within these reservations has been removed

long since and these lands are now mainly valuable for grazing purposes. The average value of the lands within these reservations will closely approximate $60 per acre.

Before any attempt is made to suggest an adjustment of present landholdings an accurate survey of each reservation should be made, the present owner of each acre ascertained, the manner in which title was acquired looked into, and the general conditions studied with a view of offering the most equitable plan, both to the present holders and the tribe at large. In brief, each reservation should be made the subject of a special study and such measures taken as would best fit conditions on that particular reservation. Any broadside legislation applying indiscriminately to all these reservations and designed to affect present landholdings, aside from meeting strenuous opposition, might produce disaster. At present these people are contented; fairly prosperous, and, in a few cases, wealthy to a limited extent. The greatest present need on these reservations is proper police supervision and the enforcement of the law. The peace officers of the State have been chary about enforcing State laws, moved in part by the doubtful question of jurisdiction and possibly more so by the uncertain outcome of any attempt to collect their usual fees.

Each reservation should be provided with an officer with full powers to see that the law is obeyed. The pow r ow placed in the hands of the tribal organizations should be promptly curtailed, as, in the past, this power has too frequently been used for selfish purposes or in other cases has not been exercised to compel order and obedience to the laws. In the past th State has been burdened with practically all expense connected with whatever enf ment of the law has been compelled, all local educational facilities furnished, and yet its hands have been effectually tied in so far as taxation of the property of these people is concerned. The Nation should either untie the knot by turning the entire matter over absolutely to the State or else assume full jurisdiction and effectually enforce it.

In view of the superior jurisdiction and power of the Federal Government over the subject matter, its broader experience in dealing with Indian problems, the urgent need for some remedial legislation and the inability of the State to offer or force a feasible solution, it is suggested that the matter he placed before Congress with recommendations that legislation to accomplish the following results be speedily enacted.

1. Promptly curtail the power and authority now lodged in the respective tribal organizations.

2. Place one or more representatives of the Federal Government on each reservation, with full powers to maintain order and enforce obedience to the laws, such officers to be subordinate to the special agent or other officer in charge of the New York Indians.

3. Declare the Indian reservations in the State of New York to be "Indian country" within the meaning of the Federal statutes prohibiting the introduction of intoxicants into such country.

4. Provide for an accurate survey of the lands within each reservation, so as to determine the present owner or claimant of each acre therein, the time when and manner in which such possession was acquired, and the equitable right of such owner thereto, which should be coupled with an investigation as to present membership of the tribes owning lands and those who are without such means.

Possession of information suggested in the preceding paragraph should enable specific recommendations to be made with a view of suggesting an equitable adjustment of the New York Indian problem.

Appreciating fully the need in the Indian Office of a ready reference to at least some of the many court decisions, congressional documents, and miscellaneous papers relating to the New York Indians, an index of the character indicated has been prepared and attached hereto as an appendix.

Respectfully,

JOHN R. T. REEVES.

APPENDIX.

THE NEW YORK INDIANS.

TREATIES.

October 22, 1784 (7 Stats., 15), with the Six Nations.
January 9, 1789 (7 Stats., 33), with the Six Nations.
November 11, 1794 (7 Stats., 44), with the Six Nations.
December 2, 1794 (7 Stats., 47), Oneidas, Tuscaroras, and Stockbridges.
May 31, 1796 (7 Stats., 55), Seven Nations of Canada.
March 29, 1797 (7 Stats., 61), Mohawks.

September 15, 1797 (7 Stats., 601), Senecas and Robert Morris.
June 30, 1802 (7 Stats., 70–72), Senecas.
February 8, 1831 (7 Stats., 342), Menominee in Wisconsin, ceded land (for New York Indians).
October 27, 1832 (7 Stats., 407–409), Menominee in Wisconsin, ceded land (for New York Indians).
January 15, 1838 (7 Stats., 550), Six Nations.
February 13, 1838 (7 Stats., 560), St. Regis.
May 20, 1842 (7 Stats., 586), Senecas.
June 27, 1846 (9 Stats., 35), Senecas.
November 5, 1857 (11 Stats., 735), Tonawandas.
November 5, 1857 (12 Stats., 991), Tonawandas.

ACTS.

February 19, 1875 (18 Stats., 330), leasing, surveys, etc., Senecas.
September 30, 1890 (26 Stats., 558), leasing.
February 20, 1893 (27 Stats., 470), leasing.
June 10, 1896 (29 Stats., 340), leasing.
June 6, 1897 (30 Stats., 89), leasing.
February 28, 1901 (31 Stats., 819), leasing.
March 3, 1901 (31 Stats., 1809), leasing.
May 30, 1908 (35 Stats., 535), leasing.
February 21, 1911 (36 Stats., 927), leasing.
May 25, 1878 (20 Stats., 535), surveys, Cattaraugus.

Congressional documents relating to leases.

Document.	No.	Congress.	Session.	Volume.	Page.
House Report	2786	Fifty-first	First	21	17636
Senate Report	1680*	do	do	22	19130
Do	2293	Fifty-second	Second	30	26041
Do	23*	Fifty-fourth	do	39	36076
Do	76*	Fifty-fifth	First	40	37430
Do	145*	do	Second	44	40759
House Report	2655	Fifty-seventh	First	55	51408
Do	2020	Sixty-first	Third	.....	.....
Do	366	Sixty-third	Second	.....	.....

Those marked with an * contain valuable information. Some of the reports listed are duplicates of prior reports, but are given here for convenient reference. The volume and page references are to "Miscellaneous Indian Documents" on file in the Indian Office Library.

STATE COURT DECISIONS RELATING TO LEASES.

[Abbreviations: A. D., appellate division; A. N. C., Abbott's new cases; Hun., reports of the State supreme court.]

Ryan *v.* Knorr (19 Hun., 540).
Baker *v.* Johns (38 Hun., 625).
Sheehan *v.* Mayer (41 Hun., 609).
Sheehan affirmed (129 A. D., 675).
Shongo *v.* Miller (45 A. D., 339).
Wait *v.* Jemison (15 A. N. C., 382).
Buffalo, etc., Ry. Co. *v.* Lowry (75 Hun., 396).
Buffalo affirmed (149 A. D., 576).
Reservation Gas Co. et al. *v.* Snyder.[1]

THE KANSAS AWARD.

Act January 28, 1893 (27 Stats., 426), authority Court of Claims to hear.
Act February 9, 1900 (31 Stats., 27), appropriation to pay judgment.
Act March 3, 1901 (31 Stats., 1077), disposition of proceeds.
Act May 27, 1902 (32 Stats., 263), disposition of proceeds.
Act April 21, 1904 (33 Stats., 208), disposition of proceeds.
Act March 3, 1909 (35 Stats., 800), disposition of proceeds.

[1] Decided Dec. 7, 1914. Not yet reported. Held that oil deposit is tribal rather than individual property.

Congressional documents relating to Kansas award.

Document.	No.	Congress.	Session.	Volume.	Page.
Executive document	Y	Fortieth	Third		
House	751	Forty-sixth	Second	6	4142-4
Do	449	Forty-seventh	First	8	6260-9
Senate miscellaneous	38	do	Second	8	6887
House	2001	do	do	8	7029
Do	673	Forty-eighth	First	11	8079
Do	15	Fiftieth	do	18	14375
Senate miscellaneous	76	do	do	18	14926
Senate	508	do	do	19	15449
House Executive	298	do	do	19	15374
House	26	Fifty-first	do	20	16977
Senate	1393	do	do	22	19098
Senate miscellaneous	46	Fifty-second	do	28	23965
Senate	910	do	do	29	24740
Do	751	Forty-eighth	do	41	38636
House	1593	Fifty-sixth	do	50	47102
Senate	322	do	do	51	48091
Do	91	do	do	52	48563
Do	285	Fifty-eighth	Second	62	58588

Some of the reports are duplicates. Volume and page references are to miscellaneous Indian documents, Indian Office library.

COURT DECISIONS RELATING TO THE KANSAS AWARD.

New York Indians *v.* United States (30 Ct. Claims Repts., 413).
New York Indians *v.* United States (33 Ct. Claims Repts., 510.)
New York Indians *v.* United States (40 Ct. Claims Repts., 448).
New York Indians *v.* United States (41 Ct. Claims Repts., 462).
New York Indians *v.* United States (170 U. S., 1).
United States *v.* New York Indians (173 U. S., 464).

THE OGDEN LAND CO.

Act August 15, 1894 (28 Stats., 301).
Act March 2, 1895 (28 Stats., 887).

Congressional documents relating to.

Document.	No.	Congress.	Session.	Volume.	Page.
House	478	Forty-third	First		
Senate executive	52	Fifty-third	Third	34	31161
Do	154	Fifty-fourth	Second	39	36245
House	2591	Fifty-seventh		55	51405
Hearings on H. R. 7262		Fifty-eighth		58	54115

Documents other than congressional.

	Volume.	Page.
By the Society of Friends	3	2906
Do	37	34375
By the Board of Indian Commissioners	20	16923
By Hon. Daniel Sherman	31	27139
By a special committee (State Assembly, No. 40)	(1906) 75	65969
By a special committee (State Assembly, No. 51)	(1889) 41	37863

All of the foregoing do not relate exclusively to the Ogden Land Co. claim, but cover conditions existing generally at the time when prepared. Volume and page references are to Miscellaneous Indian Documents, Indian Office Library.

COURT DECISIONS RELATING TO THE OGDEN LAND CO.'S CLAIM.

Ogden *v.* Lee (6 Hill., 546).
Fellows *v.* Lee (5 Den., 628).
Wadsworth *v.* Buff. Hyd. Asso. (15 Barb., 83).
People *v.* Pierre (18 Misc., 83).
Blacksmith *v.* Fellows (7 N. Y., 401).
Fellows *v.* Blacksmith (19 How. U. S., 366).
New York *v.* Dibble (21 How. U. S., 366).
The New York Indians (5 Wal. U. S., 761).
Seneca Nation *v.* Christie (49 Hun., 524).
Senaca Nation *v.* Christie (126 N. Y., 122).
Seneca Nation *v.* Christie (162 U. S., 283).
Seneca Nation *v.* Appleby (127 A. D., 770).
Senaca Nation *v.* Appleby (196 N. Y., 318).
Jemison *v.* Bell Telephone Co. (186 N. Y., 493).
New York Indians *v.* U. S. (30 Ct. Cls., 413).

Unless otherwise specified references are to New York State court reports. Many of the cases hereinafter cited under the Seneca and Tonowanda Tribes also touch on the origin of the Ogden Land Co.'s claim.

UNITED STATES SUPREME COURT CASES.

Leading cases of the United States Supreme Court touching on the Indian question generally, especially titles and the power of the Federal Government over their affairs, but not relating specifically to the Indians in New York:

Johnson *v.* McIntosh (8 Wheat., 543).
Cherokee Nation *v.* Georgia (5 Pet., 1).
Wooster *v.* Georgia (6 Pet., 515).
Mitchell *v.* United States (9 Pet., 711).
The Kansas Indians (5 Wal., 737).
Cherokee Tobacco Case (11 Wal., 616).
United States *v.* Cook (19 Wal., 591).
United States *v.* Kagama (118 U. S., 375).
Choctaw Nation *v.* United States (119 U. S., 1).
Lone Wolf *v.* Hitchcock (187 U. S., 553).

Supreme Court decisions relating exclusively to the New York Indians:

Fellows *v.* Blacksmith (19 How., 366).
New York *v.* Dibble (21 How., 366).
The New York Indians (5 Wal., 761).
Seneca Nation *v.* Christie (162 U. S., 283).
New York Indians *v.* United States (170 U. S., 1).
United States *v.* New York Indians (173 U. S., 464).
See also Benson *v.* United States (44 Fed., 178).

NEW YORK STATE COURT DECISIONS RELATING TO, ARRANGED BY TRIBES.

Tonawanda.

Jimeson *v.* Bell Telephone Co. (109 A. D., 911).
Jimeson *v.* Bell Telephone Co., affirmed (186 N. Y., 493).
Hatch *v.* Luckman (64 Misc., 508).*
Hatch *v.* Luckman (155 A. D., 765).*
Blacksmith *v.* Fellows (7 N. Y. 3 Sel., 401).
Fellow *v.* Blacksmith (19 How., 366).
New York *v.* Dibble (21 How., 366).
People *v.* Soper (7 N. Y., 428).
Blacksmith *v.* Tracy (1 Denio, 617).

Tuscarora.

In re Jack (52 Misc., 424).
Peters *v.* Tallchief (52 Misc., 617).
Peters *v.* Tallchief, reversed (121 A. D., 309).*
Cusick *v.* Daly (78 Misc., 657).
Cusick *v.* Daly, reversed (212 N. Y., 183).*
Bates *v.* Printup (31 Misc., 17).
In re Printup (121 A. D., 322).

Cases marked * will be found to contain much valuable information.

Cayuga.

Cayuga Nation *v.* Land Commissioners (74 Misc., 154).*
Cayuga Nation *v.* Land Commissioners, reversed, (152 A. D., 543).*
Cayuga Nation *v.* Land Commissioners, reversal affirmed (207 N. Y., 42).*
Cayuga Nation *v.* State (99 N. Y., 235).

Montauk.

Pharoh *v.* Benson (69 Misc., 241).*
Montauk Tribe *v.* Long Island R. R. Co. (28 A. D., 470).
Johnson *v.* Long Island R. R. Co. (162 N. Y., 462).

St. Regis.

Terrance *v.* Crowly (62 Misc., 138).*
St. Regis Indians *v.* Drum (19 John., 127).

Seneca.

Seneca Nation *v.* Jimeson (62 Misc., 91).
Silverheels *v.* Maybee (82 Misc., 48).
Seneca Nation *v.* Christie (49 Hun., 524)*.
Seneca Nation *v.* Christie (126 N. Y., 122)*.
Seneca Nation *v.* Christie (162 U. S., 284).
Seneca Nation *v.* Appleby (127 A. D., 770)*.
Seneca Nation *v.* Appleby (196 N. Y., 318).
Dole *v.* Irish (2 Barb., 639).
Jemison *v.* Pierce (78 A. D., 9).
Shongo *v.* Miller et al. (45 A. D., 339).
Ryan *v.* Knorr (19 Hun., 540).
Seneca Nation *v.* Lehly (55 Hun., 83).
Jones *v.* Gordon et al. (51 Misc., 305).
Jimeson *v.* Lehly (51 Misc., 352).
Jemmison *v.* Kennedy (55 Hun., 47).
Buffalo, etc., Ry. Co. *v.* Lowry (75 Hun., 396).
Crouse *v.* N. Y. & O. R. R. Co. (49 Hun., 576).
Singer Sewing Machine Co. *v.* Hill (60 Hun., 347).
Seneca Nation *v.* Hugaboom (132 N. Y., 493).
People *v.* Pierce (18 Misc., 83).
Wait *v.* Jemison (15 Abb. N. C., 382).
Wadsworth *v.* Buff. Hyd. Asso. (15 Barb., 83)*.
Strong and Gordon *v.* Waterman (11 Paige, 607).
Fellow *v.* Denniston (23 N. Y., 420).
The New York Indians (5 Wal., 761).

Onondaga.

George *v.* Pierce (85 Misc., 105)*.
George *v.* Pierce, reported in (148 N. Y. Sup., 230).
Onondaga Nation *v.* Thacher (29 Misc., 428).
Onondaga Nation *v.* Thacher, affirmed (53 A. D., 561).
Hastings *v.* Ellis (3 Barb., 492).
Hastings *v.* Farmer (4 N. Y., 293).

Oneida.

Jackson *v.* Wood (7 John., 290).
Jackson *v.* Sharp (14 John., 472).
Jackson *v.* Goodell (20 John., 188).
Goodell *v.* Jackson (20 John., 693).
Boylan *v.* George (133 A. D., 514).
Dana *v.* Dana (14 John., 181).

Cases marked * will be found to contain valuable information.

Many of the cases cited relate to such matters as tribal and individual property rights, tribal government and customs, inheritance, crimes, police power of the State, right of eminent domain, jurisdiction, State and Federal, etc. A rearrangement of the cases according to their respective subject matters would prove convenient. The number of cases reported, however, is not so great as to render it burdensome to find a few decisions relating to any of the points mentioned, and one case will carry cross-references to other decisions relating to the same subject matter.

JOHN R. REEVES.

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